IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

OP.No. 24792 of 2001(S)

PETITIONER:

K. GANGADHARAN, S/O. KUNHJIRAMA PANICKER,
AGED 50 YEARS, JUNIOR ENGINEER (GRADE-1),
CARRIAGE AND WAGON, KANNUR RAILWAY STATION,
RESIDING AT KODAKKATTE HOUSE,
PAYYOLI P.O., CALICUT.

BY ADV. SRI.M.R.RAJENDRAN NAIR (SR.)

RESPONDENTS:
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1. THE CHIEF PERSONNEL OFFICER, SOUTHER RAILWAY HEADQUARTERS OFFICE, ELECTRICAL BRANCH, CHENNAI.

2. THE DIVISIONAL PERSONNEL OFFICER, SOUTHER RAILWAY PALGHAT DIVISIONAL OFFICE, OLAVAKKOD.

3. ABRAHAM, SECTION ENGINEER, CARRIAGE & WAGON - ERNAKULAM MARSHALLING YARD,THAMMANAM.

4. SENIOR DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY, TRIVANDRUM.

5. UNION OF INDIA REPRESENTED BY THE SECRETARY, MINISTRY OF RAILWAYS, NEW DELHI.

BY ADV. SRI.K.P.SATHEESAN, SC, RAILWAYS
ADV. SRI.K.V.SADANANDA PRABHU,SR.SC.RAILWAYS
ADV. SRI.T.C.GOVINDA SWAMY
ADV. SMT.D.HEERA
ADV. SRI.R.SATHISH KUMAR, SC, RAILWAYS

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	:	TRUE COPY OF THE SENIORITY LIST OF HTXRs & TXRs NO. V/P. 612/MECH/VOL. III DATED 01.07.1988 ISSUED BY THE SOUTHERN RAILWAY.
EXT.P2	:	TRUE COPY OF THE COMBINED SENIORITY LIST OF HTXR/Rs.1600-2600 DATED 01.01.1991 ISSUED BY THE SOUTHERN RAILWAY.
EXT.P3	:	TRUE COPY OF THE SENIORITY LSIT OF CHIEF TRAIN EXAMINES DATED 01.04.1994 ISSUED BY THE SOUTHERN RAILWAY.
EXT.P4	:	TRUE COPY OF THE TRANSFER ORDER NO. O.O.NO.107/91/M DATED 17.07.1991 ISSUED BY THE 2ND RESPONDENT.
EXT.P5	:	TRUE COPY OF THE TRANSFER ORDER NO.J/P.676/V/I/ID/MT DATED 07.10.1991 ISSUED BY THE 2ND RESPONDENT.
EXT.P6	:	TRUE COPY OF THE REPRESENTATION DATED 15.10.1993 SUBMITTED BY THE PETITIONER TO THE Sr.DPO/PGT/CPO/MAS.
EXT. P7	:	TRUE COPY OF THE REPLY NO. J/P. 612/V/I-VOL. 3 DATED 14.01.1994 ISSUED BY THE 2ND RESPONDENT.
EXT.P8	:	TRUE COPY OF THE FINAL ORDER DATED 08.01.1998 IN O.A.NO. 313/1996 ON THE FILE OF THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.
EXT.P9.	:	TRUE COPY OF THE REPRESENTAION DATED 24.01.1998 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT
EXT.P10	:	TRUE COPY OF THE ORDER NO.P(S) 612/IV/TXR/VOL.U(Pt). DATED 11.04.1998 ISSUED BY THE 1ST RESPONDENT.
EXT.P11	:	TRUE COPY OF THE FINAL ORDER DATED 19.04.2001 IN O.A. NO.876/1998 OF THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM.
EXT.P12	:	TRUE COPY OF THE ORDER NO.J/P.189/P/VOL.I DATED 20.01.74 ISSUED BY THE DIVISIONAL OFFICE, PERSONNEL BRANCH, OLAVAKKOD TO ALL PWIs/IOWs, OLAVAKKOD DIVISION.

/TRUE COPY/

P.A. TO JUDGE.

K. BALAKRISHNAN NAIR & K.T. SANKARAN, JJ.

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O.P. No. 24792 OF 2001

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Dated this the 1st August, 2007

J U D G M E N T

Balakrishnan Nair, J:

The petitioner, who is a Junior Engineer Gr.I under the Railways, challenges Ext.P1 order of the Central Administrative Tribunal in O.A.No. 876 of 1998 dated 19th April, 2001. The claim raised by the petitioner before the Tribunal was for a declaration that he should be confirmed as Head Train Examiner with effect from 05.04.1988 and that he should be granted all consequential benefits . But the Tribunal rejected his claim on the ground that it is barred by constructive resjudicata and that he is guilty of delay and laches.

2. The brief facts of the case are the following:

The petitioner was appointed as an Apprentice Mechanic in the South Central Railway in the year 1977. He was temporarily promoted and appointed as Train Examiner in the year 1979. He was transferred to Trivandrum division as Train Examiner in the year 1982. He joined that division as juniormost in that cadre. Later he was promoted as Head Train Examiner, on an adhoc basis, on 05.02.1986. The petitioner submits, he was regularised in the cadre

of Head Train Examiner with effect from 05.10.1988 and the order of confirmation was communicated to the petitioner only in the year 1992. Later petitioner and the third respondent, who was working in the Palakkad division, were mutually transferred under the relevant rules. As per the said rules, third respondent's seniority should have been reduced to that of the petitioner, as the petitioner was junior among the two. But the petitioner submits that the third respondent's original seniority was retained even after his transfer to Thiruvananthapuram. The petitioner, on seeing Ext.P3 seniority list found that there were several vacancies available as on 05.04.1988 in the cadre of Head Train Examiner and he could have been promoted to one of those vacancies. In the meantime, the petitioner represented before the competent authority by Ext. P6 claiming that he should be treated as senior to the third respondent in the cadre of Head Train Examiner. The said representation was rejected by Ext.P7. Challenging Ext. P7, the petitioner filed O.A.No. 313 of 1996, which was disposed of by Ext.P8 order dated 08.01.1998. The petitioner was directed to file a detailed representation before the competent authority, the second respondent therein (the Chief Pesonnel Officer) and the said officer was directed to consider and pass orders. Ext.P9 is the representation filed pursuant to Ext.P8 order. The same was rejected by Ext. P10 communication dated 11.04.1998. Thereafter, the present O.A. (O.A.No. 876 of 1998) is filed.

3. The official respondents and the party respondents have filed separate counter affidavits resisting the prayers in the said O.A. The Tribunal after hearing both sides found that the petitioner is guilty of delay and laches. It was also found that since the petitioner failed to raise the present claim when the earlier O.A. 313 of 1996 was filed, the claim now made for regularisation with effect from 05.04.1988 is barred by constructive resjudicata. This Original Petition is filed challenging the said order and seeking consequential reliefs.

4. Heard learned counsel on both sides. Learned counsel for the petitioner would point out that he was promoted as the Head Train Examiner only in 1992 and he came to know about the additional vacancies only on seeing Ext.P3. Learned counsel for the third respondent, on the other hand, would point out that as evident from Exts. P4 and P5 , it could be seen that the petitioner had been transferred to Palakkad as Head Train Examiner by order dated 20.08.1991 and had been relieved on 26.09.1991. It means that even before 1991, the petitioner was promoted to the cadre of Head Train Examiner, it is submitted.

5. Even assuming that the petitioner came to know of his chances of getting retrospective promotion only in the year 1994, he should have immediately moved the authority asserting the said claim and at any rate, he should have raised that claim in the O.A.No.313 of 1996. Instead of doing so,

the said claim was raised only subsequently. So the persons in the cadre of Head Train Examiners working in Thiruvanathapuram and Palakkad divisions are entitled to sit back. Their seniority should not be allowed to be disturbed at the instance of the petitioner. The finding of the Tribunal that the O.A. is barred by constructive resjudicata is legal and valid as nothing prevented him from raising his claim for retrospective regularisation as Head Train Examiner, when he filed O.A.No. 313 of 1996. The next finding of the Tribunal that the petitioner is guilty of delay and laches is a reasonable finding on the facts of the case. It is certainly a plausible view. In any way of the matter, it cannot be described as either perverse or one which no man in his senses will arrive at. Therefore this court is not justified in interfering with the same.

Accordingly the Original Petition fails and it is dismissed.

K. BALAKRISHNAN NAIR
JUDGE.

K.T. SANKARAN,
JUDGE.

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K. BALAKRISHNAN NAIR &
K.T. SANKARAN, JJ.

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Dated this the 1st August, 2007

J U D G M E N T